

**BUCKNELL STEHLIK SATO & ORTH, LLP**  
2003 Western Avenue, Suite 400  
Seattle, Washington 98121  
(206) 587-0144 § fax (206) 587-0277

JUDGE: Timothy W. Dore  
DATE: August 11, 2017  
TIME: 9:30 a.m.  
CHAPTER: 11  
LOCATION: Seattle  
RESPONSE DATE: August 4, 2017

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF WASHINGTON, AT SEATTLE

8 In re: ) No. 16-15814-TWD  
9 LODGE HOLDINGS COMPANY, ) (Lead Case)  
10 Mukilteo Lodge, LLC, ) No. 16-15849-TWD  
11 Kirkland Lodge, LLC, ) No. 16-15850-TWD  
12 Stadium Lodge, LLC, ) No. 16-15851-TWD  
13 Downtown Lodge, LLC, ) No. 16-15852-TWD  
14 Mill Creek Lodge, LLC, ) No. 16-15853-TWD  
15 Greenwood Lodge, LLC ) No. 16-15854-TWD  
16 Debtors. ) (Substantively Consolidated Cases)  
17

---

18                   Sheena R. Aebig, the duly-appointed Chapter 11 Trustee [“Trustee”] for the debtors whose  
19 cases are consolidated [“Consolidated Debtors”] under *In re Lodge Holdings Company*, No. 16-  
20 15814, has entered into an Asset Purchase Agreement [“APA”] with CBC Partners I, LLC or assigns  
21 [collectively “CBC”], pursuant to which CBC would purchase all assets (excluding cash,  
22 receivables, and avoidance actions) of the estates of the Consolidated Debtors. Accordingly, the  
23 Trustee moves for entry of orders (a) approving sale of the debtors’ assets free and clear of liens and  
24

**BUCKNELL STEHLIK SATO & ORTH, LLP**  
2003 Western Avenue, Suite 400  
Seattle, Washington 98121  
(206) 587-0144 \$ fax (206) 587-0277

1 assumption/assignment of unexpired leases and executory contracts to CBC or other approved  
2 purchaser, together with related relief including procedures to determine issues relating to cure and  
3 adequate assurance of future performance in connection with the proposed assumption and  
4 assignment of the debtors' unexpired leases and executory contracts, and/or (b) only in the event of  
5 timely response indicating potentially qualifying competing offer interest, approving procedures for  
6 an auction, determination of the best offer, and approval of the best offer by the Court, together with  
7 related relief. The Trustee asserts that the United States Bankruptcy Court, Western District of  
8 Washington at Seattle ["Court"] has jurisdiction over this proceeding under 28 U.S.C. § 1334, this  
9 proceeding is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2)(N) and other  
10 applicable law, and the Court has authority to enter final orders granting the requested relief under  
11 11 U.S.C. §§ 363, 365, 506(c), 105, and other applicable law.  
12  
13

14       A.       **BACKGROUND**

15       The parent company debtor, Lodge Holdings Company, filed a voluntary Chapter 11 petition  
16 on November 18, 2016. The other Consolidated Debtors (Mukilteo Lodge, Kirkland Lodge,  
17 Stadium Lodge, Downtown Lodge, Mill Creek Lodge, and Greenwood Lodge) filed voluntary  
18 Chapter 11 petitions on November 21, 2016. Debtor West Seattle Lodge, LLC filed a separate, later  
19 voluntary Chapter 11 petition on February 27, 2017. The estates of the Consolidated Debtors have  
20 been substantively consolidated by order of the Bankruptcy Court; the West Seattle estate remains  
21 separate at this time. Each of the debtors other than the parent holding company, Lodge Holdings  
22 [the "Subsidiary Debtors"], continues to operate a restaurant in a location in the state of Washington,  
23 and is the tenant under a premises lease. None of the premises leases has been assumed or rejected  
24  
25

26  
27       Motion for Order Approving Sale  
28       of Assets Free and Clear of Liens, Etc. - 2

BUCKNELL STEHLIK SATO & ORTH, LLP  
2003 Western Avenue, Suite 400  
Seattle, Washington 98121  
(206) 587-0144 \$ fax (206) 587-0277

1 as of the filing of this Motion. The leases of the Consolidated Debtors may be summarized:

2       1.   Lease executed on or about November 12 and 13, 2012, between IC USA # 8  
3   Property Limited Partnership as Landlord and debtor Stadium Lodge LLC as Tenant, as the same  
3   may be amended, for certain premises located at 401 Second Avenue South, Seattle, WA 98104;

4       2.   Lease dated as of August 28, 2009, between Mukilteo Ridgewood, LLC as Landlord  
5   and debtor Mukilteo Lodge LLC as Tenant, as the same may be amended, for certain premises  
5   located at 7928 Mukilteo Speedway, Suite 101, Mukilteo, WA 98275;

6       3.   Lease with reference date of December 15, 2011, between RH Lake Associates, LLC  
7   as Landlord and debtor Kirkland Lodge LLC as Tenant, as the same may be amended, for certain  
8   premises located at 107 Lake Street, Kirkland WA 98033;

9       4.   Lease dated November 21, 2014, between Limantzakis Properties No. 1, LLC as  
10   Landlord and debtor Greenwood Lodge LLC as Tenant, as the same may be amended, for certain  
10   premises located at 8501 Greenwood Ave. N., Seattle, WA 98103;

11       5.   Lease dated April 18, 2014, between Executive Hotel Seattle, LLC as Landlord and  
12   debtor Downtown Lodge LLC as Tenant, as the same may be amended, for certain premises located  
12   at 400 Spring Street, Seattle, WA;

14       6.   Lease dated April 14, 2014, between Octagon Capital Group, LLC as Landlord and  
15   debtor Mill Creek Lodge LLC as Tenant, as the same may be amended, for certain premises located  
15   at Creekside Village, 15129 Main Street, Mill Creek, WA 98012.

16  
17       The deadline for assumption or rejection of the unexpired leases was June 19, 2017 for the  
18   IC USA # 8 (Stadium Lodge) and Executive Hotel (Downtown Lodge) leases (the Trustee has filed a  
19   motion to assume those leases effective and conditioned upon closing of a sale transaction as  
20   proposed in this Motion), and is September 30, 2017 for the remaining leases as extended and  
21   according to terms provided in a prior motion and order extending time for assumption or rejection  
22   of those remaining leases.

24       On January 11, 2017, the Court appointed the Trustee in the now consolidated cases

25

26

27

Motion for Order Approving Sale  
of Assets Free and Clear of Liens, Etc. - 3

BUCKNELL STEHLIK SATO & ORTH, LLP

2003 Western Avenue, Suite 400

Seattle, Washington 98121

(206) 587-0144 \$ fax (206) 587-0277

1 (excluding West Seattle Lodge),<sup>1</sup> for cause. The Trustee devoted substantial time and resources to  
2 attempting to obtain reasonable accounting and financial data by which to determine the profitability  
3 of the “Lodge Sports Grill” restaurants operated by the Subsidiary Debtors. Her initial assessment is  
4 summarized in the Chapter 11 Trustee’s Interim Report of Investigation and Recommendations filed  
5 March 23, 2017 in the Lodge Holdings case. Although the Consolidated Debtors have recently filed  
6 a plan of reorganization whereby their owners, Shawn Roten and Elizabeth Stewart, would retain  
7 ownership of the debtors’ assets, the Trustee is and has been deeply skeptical that any such plan  
8 would be feasible absent a massive infusion of capital, any source of which is unknown to the  
9 Trustee.

10 Among other things, amended proofs of claim filed by the IRS in the cases of the  
11 Consolidated Debtors show prepetition debt (most if not all of which is secured and/or priority debt)  
12 of nearly \$2.2 million.<sup>2</sup> Amended proofs of claim filed by the State of Washington show prepetition  
13 debt (most if not all of which is at least priority debt) in excess of another half million dollars. CBC  
14 asserts a perfected security interest in all assets of the debtors to secure debt in excess of \$920,000.<sup>3</sup>  
15 Administrative expenses of the Trustee, her professionals, and other postpetition creditors may  
16 fluctuate drastically depending on the timing of closing of a sale transaction in relation to payment  
17  
18

19

---

20 <sup>1</sup> Hearings upon motion to convert or dismiss the West Seattle Lodge case, and for appointment of a trustee  
21 therein, have been continued to July 14, 2017.

22 <sup>2</sup> Based upon a preliminary review, the Trustee believes approximately \$770,000 of this amount may be prior to  
23 the security interests of CBC (i.e., in “first position”).

24 <sup>3</sup> American Express has filed a secured proof of claim for approximately \$7,500, appearing to be secured in  
25 assets of Mukilteo Lodge, which if allowed, would be paid from sale proceeds. Executive Hotel Seattle asserts a claim  
26 secured by assets of Downtown Lodge, related to financing of improvements at that location. The Trustee expects the  
27 secured claim of Downtown Lodge to be assumed by CBC or any purchaser of the Downtown Lodge assets. Certain  
28 documentation, for example, promissory notes, suggests that private lenders to one or more Lodge entities or entities who  
are not precisely identified as one of the debtors, may have expected to be secured in certain furniture, fixtures and  
equipment at certain Lodge locations, but the Trustee has no evidence of the perfection of any such security interests.

29 BUCKNELL STEHLIK SATO & ORTH, LLP

30 2003 Western Avenue, Suite 400

31 Seattle, Washington 98121

32 (206) 587-0144 \$ fax (206) 587-0277

33 Motion for Order Approving Sale  
34 of Assets Free and Clear of Liens, Etc. - 4

1       cycles for taxes, rent and the like. The Trustee has seen no evidence that the debtors can generate  
2       sufficient cash and periodic net cash flow, to pay secured and priority claims according to the  
3       requirements of 11 U.S.C. § 1129.

4           The Trustee has made discreet, non-public inquiry with experienced restauranteurs and a  
5       potential broker for the restaurant assets of the debtors, and has provided nondisclosure agreements  
6       to a handful of potentially interested parties. However, the Trustee has not to date concluded a  
7       formal or sustained marketing program to be realistic. The operations of the debtors have continued,  
8       post-petition and subsequent to the Trustee's appointment, to rely heavily upon the continued  
9       involvement of Mr. Roten. Mr. Roten has insisted that an internal reorganization is possible and has  
10       been previously unwilling to agree to sale or shut down of any of the restaurants. Furthermore, the  
11       short time available for assumption or rejection of premises leases, which is limited by 11 U.S.C.  
12       § 365(d)(4), has limited available options. However, the Trustee has had no indication from her  
13       informal inquiries, of any realistic probability that sale of the restaurant assets could generate  
14       sufficient proceeds to pay all secured, priority and administrative debt in these cases. Additionally,  
15       the Trustee has to date considered it highly improbable that a third-party purchaser, not previously  
16       familiar or involved with the Lodge restaurants, would expend the time and resources necessary to  
17       complete all due diligence required to generate a binding, non-conditional offer while the debtors  
18       may be pursuing a plan of reorganization that, if confirmed, would render a purchase offer moot.

22           The Trustee believes that without insertion of new management and capital, despite the  
23       possibility the restaurants could generate some degree of operating profit, the restaurants will ulti-  
24       mately fail for inability to retire all secured and priority debt and effect cure and adequate assurance  
25

26  
27       Motion for Order Approving Sale  
28       of Assets Free and Clear of Liens, Etc. - 5

BUCKNELL STEHLIK SATO & ORTH, LLP  
2003 Western Avenue, Suite 400  
Seattle, Washington 98121  
(206) 587-0144 \$ fax (206) 587-0277

1 of future performance with respect to premises leases, A failure of the restaurants would likely  
2 leave all creditors, including secured and priority creditors, substantially unpaid. In the unfortunate  
3 circumstances of these cases, the Trustee believes a sale of assets, even if insufficient to retire all  
4 secured and priority debt, is preferable to a probable forced liquidation with extremely limited  
5 recovery for creditors. The proposed sale of assets to CBC would generate \$1,005,000 cash  
6 available to apply toward the IRS first priority secured claim (discounted payoff at \$420,000),  
7 substantial lease cure amounts (estimated to be up to approximately \$300,000), and administrative  
8 expenses of the United States Trustee (fees to be paid in full) and, pro rata, unpaid postpetition taxes  
9 payable by Seller under the APA, if any, together with compensation to the Trustee and her  
10 professionals (subject to Court allowance and likely payable only at a significant discount based on  
11 currently accrued hourly charges).  
12

13

14 **B. PROPOSED SALE**

15 A copy of the proposed APA is attached hereto as Exhibit 1. In the event of inconsistencies  
16 between the APA and the summary of major terms of sale provided in this Motion, the APA shall  
17 govern. In general, the APA and Trustee's proposed procedures provide:  
18

19 1. Acquired Assets. All assets of the Consolidated Debtors, including without  
20 limitation, inventory, intellectual property, leaseholds, FF&E (excluding the Greenwood Lodge  
FF&E), , and intangibles, free and clear of claims, interests and encumbrances.

21 2. Purchase Price. Cash of \$1,005,000 (One Million Five Thousand Dollars),  
22 purchaser's assumption of certain postpetition trade payables, payroll, and taxes, and purchaser's  
23 assumption of the CBC secured debt in estimated amount of \$920,556.69 calculated as of May 11,  
2017, with additional interest and charges accruing thereafter.

24 3. Assumption and assignment of leases and contracts. The above-described  
25 premises leases, unless specifically excluded by agreement of CBC and the Trustee, are to be  
assumed and assigned, at closing, to CBC. The additional contracts identified as "Acquired

26  
27 Motion for Order Approving Sale  
28 of Assets Free and Clear of Liens, Etc. - 6

BUCKNELL STEHLIK SATO & ORTH, LLP  
2003 Western Avenue, Suite 400  
Seattle, Washington 98121  
(206) 587-0144 \$ fax (206) 587-0277

1 Contracts" under the APA, Schedule 1.1(c), are also to be assumed and assigned, and consist  
2 primarily of:lease obligations for dishwashers in the Stadium and Mill Creek Lodge locations..

3       4. Conditions. CBC has satisfied or waived due diligence and financing  
4 conditions. CBC's obligation to close is conditioned without limitation upon (a) Court approval of  
5 the APA (specifically including a provision for reimbursement of up to \$50,000 of CBC's expenses  
6 in connection with due diligence and the proposed purchase, as an administrative expense in the  
7 event a sale to CBC fails to close for any reason other than as the result of CBC's actions, as to  
8 which Trustee seeks Court approval immediately and without regard to whether an auction is  
9 conducted and the results thereof), (b) entry of the Sale Order as described in the APA and in form  
10 submitted herewith, as the same may be amended with the consent of CBC, no later than 60 days  
11 following the execution date of the APA, which shall provide for the assumption and assignment of  
12 the premises leases and any identified executory contracts as described above; (c) entry into  
13 employment agreements with key employees of the debtors; (d) satisfactory evidence that all  
14 secured creditors who will not be paid in full through the sale transaction, consent to the transaction;  
15 (e) no material adverse change to the business, results of operations, prospects, condition or assets of  
16 the business; and (f) those other conditions provided in section 7.2 of the APA, and grounds for  
17 termination provided in Article 8 of the APA.

18       5. Higher and Better Offers; Backup Offer. CBC consents to the proposed  
19 procedure for consideration of competing offers, outlined as follows. The Trustee requests that the  
20 Court enter an order approving the proposed procedures, but only in the event that credible  
21 competing bid interest is timely received by the Trustee:

22           a. Responses. Any party interested in making a competing bid must  
23 submit a written response to this Motion, to be received by the Response Date (August 4, 2017),  
24 indicating that the party is prepared to offer \$2,193,656 (Two Million One Hundred Ninety-Three  
25 Thousand Six Hundred Fifty-Six Dollars)<sup>4</sup> or more, for the assets of some or all of the debtors (not  
26 exceeding those assets that are subject to the CBC APA); and must both provide the Trustee, to be  
27 received by the date of initial hearing upon this Motion (August 11, 2017), both evidence  
28 satisfactory to the Trustee in her sole discretion, of the interested party's ability to close a qualifying  
transaction by August 31, 2017, and an executed nondisclosure agreement ["NDA"] in form  
acceptable to the Trustee. No party shall be a Qualified Bidder until the Trustee has confirmed  
timely receipt of such evidence and the executed NDA.

29           b. Unconditional, all-cash offers. A competing bidder shall have until  
30 August 21, 2017 to complete due diligence and satisfy all conditions to the competing bidder's offer.  
31 A competing offer must be unconditional and for all cash, for the competing bidder to participate in  
32 the auction described below. Without limiting the foregoing, the cash must be sufficient to result in

33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47  
48  
49  
50  
51  
52  
53  
54  
55  
56  
57  
58  
59  
60  
61  
62  
63  
64  
65  
66  
67  
68  
69  
70  
71  
72  
73  
74  
75  
76  
77  
78  
79  
80  
81  
82  
83  
84  
85  
86  
87  
88  
89  
90  
91  
92  
93  
94  
95  
96  
97  
98  
99  
100  
101  
102  
103  
104  
105  
106  
107  
108  
109  
110  
111  
112  
113  
114  
115  
116  
117  
118  
119  
120  
121  
122  
123  
124  
125  
126  
127  
128  
129  
130  
131  
132  
133  
134  
135  
136  
137  
138  
139  
140  
141  
142  
143  
144  
145  
146  
147  
148  
149  
150  
151  
152  
153  
154  
155  
156  
157  
158  
159  
160  
161  
162  
163  
164  
165  
166  
167  
168  
169  
170  
171  
172  
173  
174  
175  
176  
177  
178  
179  
180  
181  
182  
183  
184  
185  
186  
187  
188  
189  
190  
191  
192  
193  
194  
195  
196  
197  
198  
199  
200  
201  
202  
203  
204  
205  
206  
207  
208  
209  
210  
211  
212  
213  
214  
215  
216  
217  
218  
219  
220  
221  
222  
223  
224  
225  
226  
227  
228  
229  
230  
231  
232  
233  
234  
235  
236  
237  
238  
239  
240  
241  
242  
243  
244  
245  
246  
247  
248  
249  
250  
251  
252  
253  
254  
255  
256  
257  
258  
259  
260  
261  
262  
263  
264  
265  
266  
267  
268  
269  
270  
271  
272  
273  
274  
275  
276  
277  
278  
279  
280  
281  
282  
283  
284  
285  
286  
287  
288  
289  
290  
291  
292  
293  
294  
295  
296  
297  
298  
299  
300  
301  
302  
303  
304  
305  
306  
307  
308  
309  
310  
311  
312  
313  
314  
315  
316  
317  
318  
319  
320  
321  
322  
323  
324  
325  
326  
327  
328  
329  
330  
331  
332  
333  
334  
335  
336  
337  
338  
339  
340  
341  
342  
343  
344  
345  
346  
347  
348  
349  
350  
351  
352  
353  
354  
355  
356  
357  
358  
359  
360  
361  
362  
363  
364  
365  
366  
367  
368  
369  
370  
371  
372  
373  
374  
375  
376  
377  
378  
379  
380  
381  
382  
383  
384  
385  
386  
387  
388  
389  
390  
391  
392  
393  
394  
395  
396  
397  
398  
399  
400  
401  
402  
403  
404  
405  
406  
407  
408  
409  
410  
411  
412  
413  
414  
415  
416  
417  
418  
419  
420  
421  
422  
423  
424  
425  
426  
427  
428  
429  
430  
431  
432  
433  
434  
435  
436  
437  
438  
439  
440  
441  
442  
443  
444  
445  
446  
447  
448  
449  
450  
451  
452  
453  
454  
455  
456  
457  
458  
459  
460  
461  
462  
463  
464  
465  
466  
467  
468  
469  
470  
471  
472  
473  
474  
475  
476  
477  
478  
479  
480  
481  
482  
483  
484  
485  
486  
487  
488  
489  
490  
491  
492  
493  
494  
495  
496  
497  
498  
499  
500  
501  
502  
503  
504  
505  
506  
507  
508  
509  
510  
511  
512  
513  
514  
515  
516  
517  
518  
519  
520  
521  
522  
523  
524  
525  
526  
527  
528  
529  
530  
531  
532  
533  
534  
535  
536  
537  
538  
539  
540  
541  
542  
543  
544  
545  
546  
547  
548  
549  
550  
551  
552  
553  
554  
555  
556  
557  
558  
559  
5510  
5511  
5512  
5513  
5514  
5515  
5516  
5517  
5518  
5519  
5520  
5521  
5522  
5523  
5524  
5525  
5526  
5527  
5528  
5529  
5530  
5531  
5532  
5533  
5534  
5535  
5536  
5537  
5538  
5539  
55310  
55311  
55312  
55313  
55314  
55315  
55316  
55317  
55318  
55319  
55320  
55321  
55322  
55323  
55324  
55325  
55326  
55327  
55328  
55329  
55330  
55331  
55332  
55333  
55334  
55335  
55336  
55337  
55338  
55339  
55340  
55341  
55342  
55343  
55344  
55345  
55346  
55347  
55348  
55349  
55350  
55351  
55352  
55353  
55354  
55355  
55356  
55357  
55358  
55359  
55360  
55361  
55362  
55363  
55364  
55365  
55366  
55367  
55368  
55369  
55370  
55371  
55372  
55373  
55374  
55375  
55376  
55377  
55378  
55379  
55380  
55381  
55382  
55383  
55384  
55385  
55386  
55387  
55388  
55389  
55390  
55391  
55392  
55393  
55394  
55395  
55396  
55397  
55398  
55399  
553100  
553101  
553102  
553103  
553104  
553105  
553106  
553107  
553108  
553109  
553110  
553111  
553112  
553113  
553114  
553115  
553116  
553117  
553118  
553119  
553120  
553121  
553122  
553123  
553124  
553125  
553126  
553127  
553128  
553129  
553130  
553131  
553132  
553133  
553134  
553135  
553136  
553137  
553138  
553139  
553140  
553141  
553142  
553143  
553144  
553145  
553146  
553147  
553148  
553149  
553150  
553151  
553152  
553153  
553154  
553155  
553156  
553157  
553158  
553159  
553160  
553161  
553162  
553163  
553164  
553165  
553166  
553167  
553168  
553169  
553170  
553171  
553172  
553173  
553174  
553175  
553176  
553177  
553178  
553179  
553180  
553181  
553182  
553183  
553184  
553185  
553186  
553187  
553188  
553189  
553190  
553191  
553192  
553193  
553194  
553195  
553196  
553197  
553198  
553199  
553200  
553201  
553202  
553203  
553204  
553205  
553206  
553207  
553208  
553209  
553210  
553211  
553212  
553213  
553214  
553215  
553216  
553217  
553218  
553219  
553220  
553221  
553222  
553223  
553224  
553225  
553226  
553227  
553228  
553229  
553230  
553231  
553232  
553233  
553234  
553235  
553236  
553237  
553238  
553239  
553240  
553241  
553242  
553243  
553244  
553245  
553246  
553247  
553248  
553249  
553250  
553251  
553252  
553253  
553254  
553255  
553256  
553257  
553258  
553259  
553260  
553261  
553262  
553263  
553264  
553265  
553266  
553267  
553268  
553269  
553270  
553271  
553272  
553273  
553274  
553275  
553276  
553277  
553278  
553279  
553280  
553281  
553282  
553283  
553284  
553285  
553286  
553287  
553288  
553289  
553290  
553291  
553292  
553293  
553294  
553295  
553296  
553297  
553298  
553299  
553300  
553301  
553302  
553303  
553304  
553305  
553306  
553307  
553308  
553309  
553310  
553311  
553312  
553313  
553314  
553315  
553316  
553317  
553318  
553319  
553320  
553321  
553322  
553323  
553324  
553325  
553326  
553327  
553328  
553329  
553330  
553331  
553332  
553333  
553334  
553335  
553336  
553337  
553338  
553339  
553340  
553341  
553342  
553343  
553344  
553345  
553346  
553347  
553348  
553349  
553350  
553351  
553352  
553353  
553354  
553355  
553356  
553357  
553358  
553359  
553360  
553361  
553362  
553363  
553364  
553365  
553366  
553367  
553368  
553369  
553370  
553371  
553372  
553373  
553374  
553375  
553376  
553377  
553378  
553379  
553380  
553381  
553382  
553383  
553384  
553385  
553386  
553387  
553388  
553389  
553390  
553391  
553392  
553393  
553394  
553395  
553396  
553397  
553398  
553399  
553400  
553401  
553402  
553403  
553404  
553405  
553406  
553407  
553408  
553409  
553410  
553411  
553412  
553413  
553414  
553415  
553416  
553417  
553418  
553419  
553420  
553421  
553422  
553423  
553424  
553425  
553426  
553427  
553428  
553429  
553430  
553431  
553432  
553433  
553434  
553435  
553436  
553437  
553438  
553439  
553440  
553441  
553442  
553443  
553444  
553445  
553446  
553447  
553448  
553449  
553450  
553451  
553452  
553453  
553454  
553455  
553456  
553457  
553458  
553459  
553460  
553461  
553462  
553463  
553464  
553465  
553466  
553467  
553468  
553469  
553470  
553471  
553472  
553473  
553474  
553475  
553476  
553477  
553478  
553479  
553480  
553481  
553482  
553483  
553484  
553485  
553486  
553487  
553488  
553489  
553490  
553491  
553492  
553493  
553494  
553495  
553496  
553497  
553498  
553499  
553500  
553501  
553502  
553503  
553504  
553505  
553506  
553507  
553508  
553509  
553510  
553511  
553512  
553513  
553514  
553515  
553516  
553517  
553518  
553519  
553520  
553521  
553522  
553523  
553524  
553525  
553526  
553527  
553528  
553529  
553530  
553531  
553532  
553533  
553534  
553535  
553536  
553537  
553538  
553539  
553540  
553541  
553542  
553543  
553544  
553545  
553546  
553547  
553548  
553549  
553550  
553551  
553552  
553553  
553554  
553555  
553556  
553557  
553558  
553559  
553560  
553561  
553562  
553563  
553564  
553565  
553566  
553567  
553568  
553569  
553570  
553571  
553572  
553573  
553574  
553575  
553576  
553577  
553578  
553579  
553580  
553581  
553582  
553583  
553584  
553585  
553586  
553587  
553588  
553589  
553590  
553591  
553592  
553593  
553594  
553595  
553596  
553597  
553598  
553599  
553600  
553601  
553602  
553603  
553604  
553605  
553606  
553607  
553608  
553609  
553610  
553611  
553612  
553613  
553614  
553615  
553616  
553617  
553618  
553619  
553620  
553621  
553622  
553623  
553624  
553625  
553626  
553627  
553628  
553629  
553630  
553631  
553632  
553633  
553634  
553635  
553636  
553637  
553638  
553639  
553640  
553641  
553642  
553643  
553644  
553645  
553646  
553647  
553648  
553649  
553650  
553651  
553652  
553653  
553654  
553655  
553656  
553657  
553658  
553659  
553660  
553661  
553662  
553663  
553664  
553665  
553666  
553667  
553668  
553669  
553670  
553671  
553672  
553673  
553674  
553675  
553676  
553677  
553678  
553679  
553680  
553681  
553682  
553683  
553684  
553685  
553686  
553687  
553688  
553689  
553690  
553691  
553692  
553693  
553694  
553695  
553696  
553697  
553698  
553699  
553700  
553701  
553702  
553703  
553704  
553705  
553706  
553707  
553708  
553709  
553710  
553711  
553712  
553713  
553714  
553715  
553716  
553717  
553718  
553719  
553720  
553721  
553722  
553723  
553724  
553725  
553726  
553727  
553728  
553729  
553730  
553731  
553732  
553733  
553734  
553735  
553736  
553737  
553738  
553739  
5537340  
5537341  
5537342  
5537343  
5537344  
5537345  
5537346  
5537347  
5537348  
5537349  
55373410  
55373411  
55373412  
55373413  
55373414  
55373415  
55373416  
55373417  
55373418  
55373419  
55373420  
55373421  
55373422  
55373423  
55373424  
55373425  
55373426  
55373427  
55373428  
55373429  
55373430  
55373431  
55373432  
55373433  
55373434  
55373435  
55373436  
55373437  
55373438  
55373439  
55373440  
55373441  
55373442  
55373443  
55373444  
55373445  
55373446  
55373447  
55373448  
55373449  
55373450  
55373451  
55373452  
55373453  
55373454  
55373455  
55373456  
55373457  
55373458  
55373459  
55373460  
55373461  
55373462  
55373463  
55373464  
55373465  
55373466  
55373467  
55373468  
55373469  
55373470  
55373471  
55373472  
55373473  
55373474  
55373475  
55373476  
55373477  
55373478  
55373479  
55373480  
55373481  
55373482  
55373483  
55373484  
55373485  
55373486  
55373487  
55373488  
55373489  
55373490  
55373491  
55373492  
55373493  
55373494  
55373495  
55373496  
55373497  
55373498  
55373499  
553734100  
553734101  
553734102  
553734103  
553734104  
553734105  
553734106  
553734107  
553734108  
553734109  
553734110  
553734111  
553734112  
553734113  
553734114  
553734115  
553734116  
553734117  
553734118  
553734119  
553734120  
553734121  
553734122  
553734123  
553734124  
553734125  
553734126  
553734127  
553734128  
553734129  
553734130  
553734131  
553734132  
553734133  
553734134  
553734135  
553734136  
553734137  
553734138  
553734139  
553734140  
553734141  
553734142  
553734143  
553734144  
553734145  
553734146  
553734147  
553734148  
553734149  
553734150  
553734151  
553734152  
553734153  
553734154  
553734155  
553734156  
553734157  
553734158  
553734159  
553734160  
553734161  
553734162  
553734163  
553734164  
553734165  
553734166  
553734167  
553734168  
553734169  
553734170  
553734171  
553734172  
553734173  
553734174  
553734175  
553734176  
553734177  
553734178  
553734179  
55373418

1 full payment of the CBC Loan as described in the APA, at closing.

BUCKNELL STEHLIK SATO & ORTH, LLP

27 Motion for Order Approving Sale  
28 of Assets Free and Clear of Liens, Etc. - 8

2003 Western Avenue, Suite 400  
Seattle, Washington 98121  
(206) 587-0144 \$ fax (206) 587-0277

1 modifications are likely to delay closing of the sale, and the cost or savings to the estates resulting  
2 from such modifications or delay, (iv) form and amount of the total consideration to be received by  
3 the bankruptcy estates, (v) financial strength of the Qualified Bidder, and (vi) whether the IRS  
4 consents to the transaction with the Qualified Bidder and the extent to which the Qualified Bidder's  
offer will provide value for assumption and assignment of leases and executory contracts, and to pay  
expenses of administration and other claims, in the estates with such consent of the IRS as may be  
required to make such value available to the estates.

5  
6 f. Trustee's Consideration of Bids and Report; Potential Backup Offer.  
7 The Trustee will file a report with the Court within two business days following the auction,  
8 summarizing the results of the same and the Trustee's recommendation as to the Winning Bid. The  
9 Trustee's determination of the Winning Bid will be made by the Trustee in her discretion and exer-  
cise of business judgment in the circumstances of these cases. The Trustee may, with consent of a  
Qualified Bidder, in her discretion and exercise of business judgment in the circumstances of these  
cases, accept one qualifying bid as a "backup" offer ["Backup Bid"] to be closed in the event the  
offer approved by the Court is not timely closed.

10  
11 g. Sale Confirmation Hearing; Closing Deadlines; Related Relief. The  
12 Trustee hereby requests that a hearing be set between August 30 and September 1, 2017, as the  
13 Court's calendar may permit, for the Court's consideration of the Winning Bid and any Backup Bid  
[the "Sale Confirmation Hearing"]. The Trustee shall request that the Court approve the Winning  
14 Bid for closing [if so approved by the Court, the "Approved Offer"] and any Backup Bid for closing  
in the event the Winning Bid is not timely closed [if so approved by the Court, the "Approved  
Backup"]. Closing of a particular transaction is conditioned upon the Court's entry of an order  
15 approving sale according to the terms of a Winning Bid and/or Backup Bid. Closing shall be  
scheduled for no later than September 8, 2017 ["Closing Deadline"], or in the event the Approved  
16 Offer is not timely closed, no later than September 15, 2017 ["Backup Closing Deadline"] as to any  
17 Approved Backup.

18 h. Disposition of Initial Deposits. As soon as practicable following  
19 completion of any auction, the Trustee shall return Initial Deposits delivered by unsuccessful  
20 bidders. The Trustee shall retain Initial Deposits delivered in connection with the Winning Bid and  
any Backup Bid pending closing, to be applied to the particular purchaser's obligation at closing. In  
21 the event the Court does not approve a Winning Bid or any Backup Bid at the Sale Confirmation  
Hearing, through no fault of the bidder, the Trustee shall return the Initial Deposit delivered by such  
22 bidder as soon as practicable following the Sale Confirmation hearing. If the Approved Offer fails  
to close the sale by the Closing Deadline, as a result of breach by the entity making or  
23 consummating that offer, the Initial Deposit provided as part of the Approved Offer will be forfeited  
to the debtors' estates, without limiting the Trustee's right to seek additional damages or remedies as  
24 a result of such breach. If the Approved Offer timely closes, the Initial Deposit delivered in  
connection with any Approved Backup will be returned as soon as practicable. If the Approved  
25 Backup fails to close by the Backup Closing Deadline, as a result of breach by the entity making or

26  
27 Motion for Order Approving Sale  
28 of Assets Free and Clear of Liens, Etc. - 9

BUCKNELL STEHLIK SATO & ORTH, LLP  
2003 Western Avenue, Suite 400  
Seattle, Washington 98121  
(206) 587-0144 \$ fax (206) 587-0277

1 consummating that offer, the Initial Deposit provided as part of the Approved Backup will be  
2 forfeited to the debtors' estates, without limiting the Trustee's right to seek additional damages or  
3 remedies as a result of such breach.

7 By way of related relief, the Trustee anticipates that modifications to the proposed APA,  
8 compromises with creditors or parties in interest, or similar actions may be necessary or appropriate  
9 to facilitate a disposition of assets of the estates for value in these cases. In event of such  
10 modifications, compromises and the like, the Trustee would seek to advise the Court as soon as  
11 practicable. The Trustee hereby moves for entry of an order approving such modifications,  
12 compromises and similar matters as may arise in the sale process, at the initial hearing upon this  
13 Motion, or at the Sale Confirmation Hearing if competing purchase interest is timely asserted and an  
14 auction process results.

### C. ASSUMPTION OF UNEXPIRED LEASES

18 The Trustee moves, pursuant to 11 U.S.C. § 365 and other applicable law, for authority to  
19 assume and assign the unexpired leases and executory contracts, if any, that are subject to the CBC  
20 APA and any alternative APA that may be approved by the Court as the Approved Offer or Backup  
21 Offer, conditioned upon and effective at closing of the sale of assets pursuant to the Approved Offer  
22 or Backup Offer. The Trustee requests that a hearing be set to consider any cure, adequate assurance  
23 of prompt cure, and adequate assurance of future performance issues that are not otherwise settled  
24 among a landlord on one hand, and the Trustee (or CBC or other submitted of the Approved Offer  
25 among a landlord on one hand, and the Trustee (or CBC or other submitted of the Approved Offer

**BUCKNELL STEHLIK SATO & ORTH, LLP**  
2003 Western Avenue, Suite 400  
Seattle, Washington 98121  
(206) 587-0144 \$ fax (206) 587-0277

1 with the Trustee's consent) on the other, with associated dates for submissions to the Court.

**D. AUTHORITY AND ARGUMENT – ALLOCATION OF PROCEEDS**

3 11 U.S.C. § 363(b) authorizes a trustee to sell assets of the estate outside the ordinary course  
4 of business. A number of cases generally recognize that such a sale may be approved if a sound  
5 business purpose exists for the sale, the sale is in the best interest of the estate (i.e., the sale price is  
6 fair and reasonable), notice to creditors was proper, and the sale is made in good faith. *E.g., In re*  
7 *Slates*, 2012 WL 5359489, at \*11 (9<sup>th</sup> Cir BAP 2012), *citing In re Wilde Horse Enters., Inc.*, 136

10 Given the massive tax obligations incurred by the Consolidated Debtors prior to the bankruptcy  
11 petition, the lack of evidence that the debtors can propose feasible and confirmable plans of reor-  
12 ganization, and the deadline for assumption or rejection of executory leases looming in these cases,  
13 there is obvious business justification for the proposed sale. The Trustee has explored options for  
14 disposition of the assets in good faith, believes CBC has acted in good faith in making its offer for  
15 the assets, and is aware of no collusion or attempt to take unfair advantages of other potential  
16 bidders.<sup>5</sup> Furthermore, the Trustee is aware of no evidence to support a contention that the assets are  
17 worth more than the secured and priority debt in the consolidated cases. In the circumstances, the  
18 Trustee believes that failure to sell all the assets promptly is likely to result ultimately in shut down  
19 of the businesses with little to no recovery for creditors.  
20

22 11 U.S.C. § 363(f) authorizes sale of property free and clear of any interest in such property  
23

24       <sup>5</sup> As noted, the Trustee requests immediate approval of the provision in the APA providing that CBC may seek  
25 reimbursement of its reasonable due diligence and similar costs related to this transaction, as an administrative expense.  
The Trustee negotiated with CBC in good faith, to place a \$30,000 cap on that potential reimbursement.

BUCKNELL STEHLIK SATO & ORTH, LLP

2003 Western Avenue, Suite 400

Seattle, Washington 98121

(206) 587-0144 § fax (206) 587-0277

1 of an entity other than the estate, if an entity consents. The Trustee has approached the Internal  
2 Revenue Service, which has filed an amended proof of claim for approximately \$2.2 million (of  
3 which approximately \$770,000 may be senior to the blanket security interest of CBC in the assets of  
4 all debtors), to obtain consent to the proposed CBC sale. The Trustee understands that the IRS  
5 consents to the CBC sale and consents (or will not object) to the following allocation of the \$1  
6 million cash portion of the purchase consideration and related provisions:  
7

- 8 1. IRS to receive \$420,000 from the cash consideration;
- 9 2. Set aside of \$7,497.93 to pay secured claim of American Express Bank, to the  
10 extent allowed;

11 3. Carveout or agreed 11 U.S.C. § 506(c) assessment for cure payments under  
12 leases and contracts to be assumed and assigned to CBC (estimated at up to approximately  
13 \$300,000). The Trustee estimates that such cure payments should not exceed that amount and  
14 reserves the right to object to claimed defaults and cure amounts. The sum of \$300,000 is to be set  
15 aside at closing, for the purpose of making such cure payments as the same may be settled with the  
16 Trustee or by CBC with the Trustee's consent, or determined at hearing.  
17

18 5. The balance of the purchase price will be treated as a carveout or agreed 11  
19 U.S.C. § 506(c) assessment to pay unpaid United States Trustee fees, unpaid postpetition taxes  
20 payable by Seller under the APA, if any, and allowed compensation to the Trustee and her  
21 professionals, subject to allowance by the Court. It is anticipated that the purchase price balance  
22 will be significantly less than the accrued hourly fees of the Trustee and her professionals (subject to  
23 statutory maximum compensation to the Trustee), and such allowed compensation and unpaid  
24

26  
27 Motion for Order Approving Sale  
28 of Assets Free and Clear of Liens, Etc. - 12

BUCKNELL STEHLIK SATO & ORTH, LLP  
2003 Western Avenue, Suite 400  
Seattle, Washington 98121  
(206) 587-0144 \$ fax (206) 587-0277

1 postpetition taxes payable by Seller under the APA, if any, accordingly will be paid pro rata or as  
2 otherwise agreed among the Trustee and her professionals. The estimated amounts accrued by the  
3 Trustee and her professionals through May 2017, subject to application and allowance, are believed  
4 to be in the range of \$300,000, and it is anticipated that additional substantial charges will be  
5 accrued thereafter and through completion of the cases.  
6

7           6.       The IRS consents to CBC inclusion of assumption of its debt as part of the  
8 CBC offer, despite insufficiency of the purchase price to pay all of IRS's secured claims.

9           7.       If and to the extent amounts set aside above are not necessary for the  
10 identified purposes, the surplus may be applied to items paid pro-rata under paragraph (5) above,  
11 and in the unlikely event of a surplus, toward secured claims junior to the CBC secured claim.  
12

13           In this regard, 11 U.S.C. § 506(c) authorizes a trustee to recover from property securing an  
14 allowed secured claim the reasonable, necessary costs and expenses of preserving, or disposing of,  
15 such property to the extent of any benefit to the holder of such claim. The Trustee submits that  
16 virtually all of her services, those of her professionals, and the various trade, tax and similar  
17 obligations incurred have been necessary to preserve or dispose of property.  
18

19           11 U.S.C. § 365(b) authorizes assumption of an executory contract or unexpired lease upon  
20 cure or adequate assurance of prompt cure, of defaults, compensation for losses resulting from  
21 default, and adequate assurance of future performance. Subsection (f) authorizes assignment of  
22 executory contracts and unexpired leases if adequate assurance of future performance is provided,  
23 regardless whether there has been a default.  
24

25           WHEREFORE, the Trustee requests entry of order(s) in form accompanying this Motion, as  
26

27           Motion for Order Approving Sale  
28           of Assets Free and Clear of Liens, Etc. - 13

BUCKNELL STEHLIK SATO & ORTH, LLP  
2003 Western Avenue, Suite 400  
Seattle, Washington 98121  
(206) 587-0144 \$ fax (206) 587-0277

1 the same may be modified, providing the relief requested.

2 Respectfully submitted this 7th day of July 2017.

3 BUCKNELL STEHLIK SATO & ORTH, LLP

4 /s/ Edwin K. Sato

5 Thomas N. Bucknell, WSBA # 1587

6 Edwin K. Sato, WSBA #13633

7 Andrea D. Orth, WSBA # 24355

8 Attorneys for Trustee, Sheena R. Aebig

9 VERIFICATION

10 SHEENA R. AEBIG states:

11 1. I am the duly-appointed Chapter 11 Trustee in the above-captioned cases, of legal age  
12 and competent to testify herein, and state the following based upon my personal knowledge and  
13 belief.

14 2. I have reviewed the foregoing motion, and based upon such investigation and  
15 inquiries as I have been able to conduct or make in the period between my appointment and the date  
16 hereof, verify the factual assertions therein to be true to the best of my information and belief.

17 3. In addition, I have discussed the proposed CBC sale transaction with counsel to the  
18 Internal Revenue Service, in light of the insufficiency of the proposed purchase price to pay all  
19 secured claims of the IRS and the anticipated administrative expenses of these cases. It appears that  
20 the IRS may have the first-position lien on assets of the estates by virtue of federal tax lien filings  
21 pre-dating the CBC UCC-1 filings, to the extent of nearly \$770,000. The IRS has consented to a  
22 reduced payment of \$420,000, specifically as to the cash purchase consideration provided in the  
23 CBC offer, as summarized in the Motion.

24 BUCKNELL STEHLIK SATO & ORTH, LLP

25 2003 Western Avenue, Suite 400

26 Seattle, Washington 98121

27 (206) 587-0144 \$ fax (206) 587-0277

28 Motion for Order Approving Sale  
of Assets Free and Clear of Liens, Etc. - 14

1 I declare under penalty of perjury that the foregoing is true this 7th day of July 2017.

2 */s/ Sheena R. Aebig*

---

3 Sheena R. Aebig

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

Motion for Order Approving Sale  
of Assets Free and Clear of Liens, Etc. - 15

**BUCKNELL STEHLIK SATO & ORTH, LLP**

2003 Western Avenue, Suite 400

Seattle, Washington 98121

(206) 587-0144 \$ fax (206) 587-0277